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Resolution adopted by the Human Rights Council on 22 June 2017

35/12. Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations, articles 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4, 9, 14 and 26 of the International Covenant on Civil and Political Rights, and bearing in mind the Vienna Declaration and Programme of Action,

Recalling the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on the Role of Prosecutors, the Bangalore Principles of Judicial Conduct and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,

Recalling also all previous resolutions and decisions of the Human Rights Council, the Commission on Human Rights and the General Assembly on the independence and impartiality of the judiciary and on the integrity of the judicial system,

Taking note of the reports of the Special Rapporteur on the independence of judges and lawyers submitted to the Human Rights Council at its thirty-second[1] and thirty-fifth[2] sessions, and to the General Assembly at its seventy-first session,[3]

Convinced that an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution able to perform its functions accordingly, and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials and the administration of justice without any discrimination,

Recalling that prosecutors should, in accordance with the law, perform their functions fairly, consistently and expeditiously, respect and protect human dignity, and

[1] A/HRC/32/34.
[2] A/HRC/35/31.
[3] A/71/348.

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uphold human rights, thus contributing to due process and the smooth functioning of the criminal justice system,

Emphasizing that the independence and impartiality of the judiciary and the independence of lawyers and the legal profession are necessary elements in the realization of Sustainable Development Goal 16 of the 2030 Agenda of Sustainable Development,[4] in which Member States committed, inter alia, to provide equal access to justice for all and build effective, accountable and inclusive institutions at all levels,

Condemning the increasingly frequent attacks on the independence of judges, lawyers, prosecutors and court officials, in particular threats, intimidation and interference in the discharge of their professional functions,

Recalling that every State should provide an effective framework of remedies to redress human rights grievances or violations and that the administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession consistent with applicable standards contained in relevant international instruments, is essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development,

Recalling also that it is essential to ensure that judges, prosecutors, lawyers and court officials possess the professional qualifications required for the performance of their functions through improved methods of recruitment, as well as legal and professional training, and through the provision of all necessary means for the proper performance of their role in ensuring the rule of law,

Noting the importance of tailored and interdisciplinary human rights training for all judges, lawyers, prosecutors and other professionals concerned in the administration of justice as a measure for avoiding discrimination in the administration of justice,

Stressing the importance of ensuring accountability, transparency and integrity in the judiciary as an essential element of judicial independence and as a concept inherent to the rule of law when it is implemented in line with the Basic Principles on the Independence of the Judiciary and other relevant norms, principles and standards,

Emphasizing that judges, prosecutors and lawyers play a critical role in upholding human rights, including the absolute and non-derogable right of freedom from torture and other cruel, inhuman or degrading treatment or punishment,

Emphasizing also that an independent and impartial judiciary, objective and impartial prosecution services and an independent legal profession, which foster a balanced representation of men and women and the establishment of gender-sensitive procedures, are essential for the effective protection of women's rights, including protection from violence and revictimization through court systems, to ensuring that the administration of justice is free from gender-based discrimination and stereotypes, and to a recognition that both men and women benefit when women are treated equally by the justice sector,

Acknowledging the vital role of professional associations of lawyers in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements and providing legal services to all in need of them,

Recognizing the importance of independent and self-governing bar associations and professional associations of judges and prosecutors, and of non-governmental organizations working in defence of the principle of the independence of judges and lawyers,

[4] General Assembly resolution 70/1.

Expressing its concern about situations where the entry into or continued practice within the legal profession is controlled or arbitrarily interfered with by the executive branch, with particular regard to abuse of systems for the licensing of lawyers,

Stressing the role that independent and effective national human rights institutions established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) can and should play in strengthening the rule of law and in supporting the independence and integrity of the judicial system,

Recognizing that accessible and effective legal aid is an essential element of a fair, humane and efficient system of administration of justice that is based on the rule of law,

Noting the rights and specific needs of women, children and persons belonging to minorities, particularly those in situations of vulnerability who are in contact with justice systems, who may require particular attention, protection and skills from the professionals interacting with them, especially from lawyers, prosecutors and judges,

Acknowledging the importance of a privileged lawyer-client relationship based on the principle of confidentiality,

Reaffirming the Human Rights Council resolutions in which the Council extended the mandate of the Special Rapporteur on the independence of judges and lawyers for a period of three years, and acknowledging the importance of the mandate holder's ability to cooperate closely, within the framework of the mandate, with the Office of the United Nations High Commissioner for Human Rights, including in the fields of advisory services and technical cooperation, in the effort to guarantee the independence of judges and lawyers,

1. *Calls upon* all States to guarantee the independence of judges and lawyers and the objectivity and impartiality of prosecutors, and their ability to perform their functions accordingly, including by taking effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional functions without interference, harassment, threats or intimidation of any kind;

2. *Encourages* States to promote diversity in the composition of the members of the judiciary, including by taking into account a gender perspective and by actively promoting the balanced representation of women and men from various segments of society at all levels, and persons belonging to minorities and other disadvantaged groups, and to ensure that the requirements for joining the judiciary and the selection process thereof are non-discriminatory, public and transparent, based on objective criteria and guarantee the appointment of individuals of integrity and ability with appropriate training and qualifications in law, based on individual merit and under equal working conditions;

3. *Stresses* that the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and age of retirement should be adequately secured by law, that the security of tenure of judges is an essential guarantee of the independence of the judiciary and that grounds for their removal must be explicit, with well-defined circumstances provided by law, involving reasons of incapacity or behaviour that renders them unfit to discharge their functions, and that procedures upon which the discipline, suspension or removal of a judge are based should comply with due process;

4. *Encourages* States to develop, as appropriate, policies, procedures and programmes in the area of restorative justice as part of a comprehensive justice system,

5. *Also encourages* States to consider, in collaboration with relevant national entities, such as bar associations, associations of judges and prosecutors, and educational institutions assisting the judiciary, developing guidance on issues such as gender, children,

persons with disabilities, indigenous peoples and migrants, among others, to inform the action of judges, lawyers, prosecutors and other actors in the judicial system;

6. *Emphasizes* that the Basic Principles on the Role of Lawyers provide that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their function;

7. *Emphasizes* that lawyers should be enabled to discharge their functions freely, independently and without any fear of reprisal;

8. *Calls upon* States to ensure that prosecutors can perform their functional activities in an independent, objective and impartial manner;

9. *Condemns* all acts of violence, intimidation or reprisal, from any quarter and for any reason, against judges, prosecutors and lawyers, and reminds States of their duty to uphold the integrity of judges, prosecutors and lawyers and to protect them, and their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and to bring perpetrators to justice;

10. *Expresses its deep concern* about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession, and calls upon States to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable;

11. *Calls upon* States, in collaboration with relevant national entities, such as bar associations, associations of judges and prosecutors, and educational institutions, to provide adequate training, including human rights training, for judges, prosecutors and lawyers, both on initial appointment and periodically throughout their careers, taking into account regional and international human rights law and, where applicable and relevant, the concluding observations and decisions of human rights mechanisms, such as treaty bodies and regional human rights courts;

12. *Encourages* States to take measures to combat discrimination in the administration of justice by, inter alia, providing for tailored and interdisciplinary human rights training, including anti-racist, multicultural, gender-sensitive and child rights training, to all judges, lawyers and prosecutors;

13. *Underscores* the importance for States of developing and implementing an effective and sustainable legal aid system that is consistent with their international human rights obligations and takes into account relevant commitments and good practices, so that legal aid is available and accessible at all stages of legal proceedings, subject to appropriate eligibility criteria;

14. *Urges* all Governments to cooperate with and to assist the Special Rapporteur on the independence of judges and lawyers in the performance of his or her tasks, to provide all information requested and to respond to communications transmitted to them by the Special Rapporteur without undue delay;

15. *Invites* States to take measures, including by adopting domestic legislation, to provide for independent and self-governing professional associations of lawyers and to recognize the vital role played by lawyers in upholding the rule of law and promoting and protecting human rights;

16. *Calls upon* States to ensure that legal provisions that are or have been adopted in relation to counter-terrorism or national security are consistent with the international obligations of the State concerning the right to a fair trial, the right to liberty,

the right to an effective remedy for violations of human rights and other provisions of international law relevant to the role of judges, prosecutors and lawyers;

17. *Invites* the Special Rapporteur to collaborate with relevant stakeholders within the United Nations system in the areas pertaining to the mandate;

18. *Calls upon* Governments to give serious consideration to responding favourably to the requests of the Special Rapporteur to visit their country, and urges States to enter into a constructive dialogue with the Special Rapporteur with respect to the follow-up to and implementation of his or her recommendations to enable him or her to fulfil the mandate even more effectively;

19. *Encourages* the Special Rapporteur to facilitate the provision of technical assistance and capacity-building and the dissemination of best practices, including through engagement with relevant stakeholders and in consultation with the Office of the United Nations High Commissioner for Human Rights, when requested by the State concerned, with a view to establishing and strengthening the rule of law, paying particular attention to the administration of justice and the role of an independent and competent judiciary and legal profession;

20. *Encourages* Governments that face difficulties in guaranteeing the independence of judges and lawyers, the objectivity and impartiality of prosecutors and their ability to perform their functions accordingly, or that are determined to take measures to implement these principles further to consult and to consider the services of the Special Rapporteur, for instance by inviting him or her to visit their country;

21. *Also encourages* Governments to give due consideration to recommendations made by United Nations human rights mechanisms, and to implement supported recommendations of the universal periodic review process, addressing the independence and effectiveness of the judiciary and their effective implementation, and invites the international community, regional organizations and the United Nations system to support any implementation efforts;

22. *Invites* United Nations agencies, funds and programmes to continue their activities in the areas of the administration of justice and the rule of law, including at the country level at the request of the State, encourages States to reflect such activities in their national capacity-building plans, and emphasizes that institutions concerned with the administration of justice should be properly funded;

23. *Encourages* States to ensure that their legal frameworks, implementing regulations and judicial manuals are fully in line with their international obligations and take into account relevant commitments in the areas of the administration of justice and the rule of law;

24. *Decides* to continue consideration of this issue in accordance with its annual programme of work.

34th meeting
22 June 2017

[Adopted without a vote.]